

**BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES**

In the Matter of the Complaint)	SUMMARY OF FACTS
Against Coral Cummings, Lincoln)	AND
County Election Administrator)	STATEMENT OF FINDINGS

On June 21, 2000 Cajun James filed a complaint against Coral Cummings, Lincoln County Election Administrator. The James' complaint alleges that Cummings violated two provisions of Montana law:

CLAIM I

Complainant James alleges that Cummings violated Montana Code Annotated § 13-35-235, by releasing to the press a letter addressed to Cummings from Deputy Secretary of State Joe Kerwin.

CLAIM II

James alleges that Cummings, by violating Montana Code Annotated §13-35-235, also violated Montana Code Annotated § 13-35-204.

SUMMARY OF FACTS

1. On May 17, 2000 Cajun James filed two declarations of intent as a write-in candidate for County Commissioner, District 3: one as a Democratic Party candidate and one as a Republican Party candidate. At the time of the filings, James was a candidate for the Reform Party's nomination for County Commissioner, District 3.

2. On May 19, 2000 Lincoln County Election Administrator Coral Cummings faxed a letter to Joe Kerwin, Deputy Secretary of State, Elections Bureau, requesting advice on the legality of a candidate, who has already filed on a party ballot, submitting declarations of intent for one or more additional party(ies).

3. Prior to receiving Kerwin's response to her inquiry, Cummings was contacted by Steve Newman of The Tobacco Valley News who asked for information regarding James' multiple candidacies. Cummings advised Newman she had requested an

opinion from Joe Kerwin, chief election official of the State. Newman made a request that Cummings provide to him Kerwin's response when that response was received.

4. On May 22, 2000 Kerwin replied to Cummings' inquiry by fax stating that it was the Secretary of State's advice that James could not run as a candidate for County Commissioner for the nominations of the Democrat, Reform, and Republican parties. Kerwin recommended that Cummings consult with the Lincoln County Attorney before taking action in this regard. In addition Kerwin confirmed Cummings' understanding that, pursuant to § 13-10-302, Montana Code Annotated, a candidate for one party's nomination receiving write-in votes on another party's ballot may not combine those votes.

5. On May 22, 2000 Cummings submitted to Deputy Lincoln County Attorney Robert Slomski copies of her May 19, 2000 letter to Kerwin and Kerwin's May 22, 2000 response. She requested a written opinion from the Lincoln County Attorney's office, stating in that request: "Today, May 22nd, 2000, 5:00 p.m. is the deadline for the declarations of intent for write in candidacy to be filed, so I would appreciate hearing from you by then."

6. On May 22, 2000 Cummings provided to Newman, as he had requested, the information contained in Kerwin's May 22, 2000 response. She also advised Newman that, upon Kerwin's advice, she had requested a written opinion from the office of the County Attorney. Newman requested Cummings send to him a copy of that opinion when it was received from the County Attorney.

7. On May 25, 2000 The Tobacco Valley News published an article presenting the background of James' decision to file as a candidate on the Reform Party ballot as well as a write-in candidate on both the Democratic and Republican ballots. The article presented Kerwin's advice that "...a person can be a declared candidate for only one party." The article further stated that Cummings was consulting with the Lincoln County Attorney and had requested a determination "...as to whether James will be permitted to run as a write-in candidate....as well as a declared candidate."

8. On May 31, 2000 Cummings received an opinion from Lincoln County Attorney Bernard Cassidy that Montana law does not preclude a candidate from filing a

declaration of intent as a write-in for more than one party even if that candidate has filed on a party ballot.

9. On May 31, 2000 Cummings faxed Cassidy's opinion to The Tobacco Valley News as requested; however, it was not received in time for information from that opinion to be printed in the June 1, 2000 edition of the newspaper.

STATEMENT OF FINDINGS

CLAIM I

James alleges that Cummings, acting upon a request from the news media, disseminated a letter received from the office of the Secretary of State and, in so doing, violated Montana Code Annotated § 13-35-235. That statute provides, in relevant part:

A person may not knowingly or purposely disseminate to any elector information about election procedures that is incorrect or misleading or gives the impression that the information has been officially disseminated by an election administrator.

The letter in question is a "public writing," as defined in Montana Code Annotated § 2-6-101. Citizens of the State of Montana are entitled to inspect and copy public writings. Montana Code Annotated § 2-6-102. In accordance with the right of Montana citizens to inspect public records, Cummings was required to make available the letter received from the Secretary of State's office once it had been requested. There is no overriding individual privacy or safety or security interest that would have allowed her to withhold this communication.

A violation of Montana Code Annotated § 13-35-235 requires proof that a person knowingly or purposely disseminated incorrect or misleading information regarding election procedures. There is no evidence that Cummings did so. Rather, she simply responded to a request for public information, as required by the constitution and the laws of this state.

CLAIM II

James contends that, as a result of violating Montana Code Annotated § 13-35-235, Cummings violated Montana Code Annotated § 13-35-204, which provides:

A person charged with performance of any duty under the provisions of the election laws of this state is guilty of

official misconduct and is punishable as provided in 45-7-401 whenever the person:

(1) knowingly neglects or refuses to perform that duty;

or

(2) knowingly and fraudulently acts, in his official capacity, in contravention or violation of any provision of the election laws.

As there was no violation of Montana Code Annotated §13-35-235, Claim II is without merit.

CONCLUSION

Based on the preceding Summary of Facts and Statement of Findings, Coral Cummings did not violate Montana Code Annotated §§ 13-35-204 and 13-35-235.

DATED this _____ day of July, 2000.

Linda L., Vaughey
Commissioner of Political Practices